

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 499/2016

Date of Decision: 25.11.2016

STATE (GNCT OF DELHI) Petitioner
Through: Ms.Aashaa Tiwari, APP for State.
SI Mahendra Koli, PS Subzi Mandi
versus

PAWAN KUMAR CHHOKRA & ANR. Respondents
Through: None.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MS. JUSTICE ANU MALHOTRA

GITA MITTAL, J (Oral)

Crl.M.A.No.14592/2016 (Condonation of delay)

We have heard Ms.Aashaa Tiwari, learned APP for the State on this application for condonation of delay.

For the reasons stated in the application, the delay in filing the petition is condoned. This application is allowed.

CRL.L.P. 499/2016

1. The instant petition has been filed by the State under Section 378(1) Cr.P.C. complaining that the respondents deserve to be convicted under Section 307 IPC with which they were charged and further that the Trial Judge has erred in releasing the respondents on probation and payment of compensation.

2. We have heard Ms.Aashaa Tiwari learned APP for the State and have carefully perused the trial court record. We have been carefully taken through the record by learned APP and have considered this leave petition which has been filed under Section 378(1) of the Cr.P.C. filed by the State assailing the judgment dated 25th April, 2016 and order on sentence dated 28th April, 2016 whereby after finding the respondents guilty of commission of offence under Section 324/34 of the IPC and not under Section 307 IPC with which they were charged. The respondents thereafter were ordered to be released on probation for a period of three years subject to the condition that they shall furnish a personal bond of Rs. 50,000/- with one surety of like amount and also directed to pay compensation to the injured/complainant.

3. The record of the case shows that the injured/victim Puneet Kumar (PW-1) has borrowed a sum of Rs.5000/- from the respondent No.1/(Raj Kishore Chhokra. On 09.09.2013, the injured Puneet Kumar PW-1, of his own, had gone to the shop of Raj Kishore Chhokra/respondent No. 2 herein. At the shop the Raj Kishore Chhokra/respondent No. 2 and his son Pawan Kumar Chhokra/respondent No. 1 were present and demanded the money which he had borrowed. This witness has stated that he was unable to return the amount because of unemployment. Puneet Kumar PW-1 requested for 2-3 days to make the arrangement. It was alleged that on this, the respondents had stated that they would end the game that day and that he had to either return the money or otherwise they would kill him. The witness PW-1 has testified that

they started inflicting leg and fists blows on him and that Raj Kishore Chhokra had whacked the head of the Puneet with a sharp edged weapon and blood started oozing out.

4. The witness has proved that he took treatment for his injuries in the Hindu Rao Hospital vide MLC bearing No. 7154/2015 (Ex.PW-2/A), PW-1 also called the PCR which report was forwarded to the local station which logged the same as DD No.38A Ex.PW-8/A . Statement to this effect made by Puneet Kumar, on the basis of the rukka the FIR No. 194/2013, Ex.PW-5/A was registered at PS Subzi Mandi under Section 307 IPC.

5. After completion of investigation under Section 173 Cr.P.C., the charge-sheet came to be filed before the Metropolitan Magistrate. The record discloses that by an order dated 2nd April, 2014 the respondents were charged with a commission of the offence under Section 307/34 IPC. The respondents pleaded not guilty and claimed trial. In order to substantiate the charge the prosecution examined eleven witnesses. In his statement under Section 313 Cr.P.C. the respondents denied all the incriminating circumstances. No defence was led.

6. After considering the evidence in its entirety by the impugned judgment dated 25th April, 2016, the Trial Judge has held that the prosecution was able to establish the fact that Puneet Kumar PW-1 had actually gone to the shop of the accused persons himself and also the fact that he had borrowed the amount of Rs.5000/-. The learned Trial Judge has scrutinized the MLC Ex. PW-2/A wherein the doctor has reported smell of alcohol coming

from the complainant. As per the alcohol meter the doctor has noted consumption of 781.4 mg/100 ml of Alcohol by the complainant which showed that he was heavily drunk. The respondent had set up a defence that they had been falsely implicated by the complainant for the reason that the injured/Puneet Kumar did not want to return the money which he had borrowed from them. From the cross-examination of Puneet Kumar PW-1, the complainant the Trial Judge has concluded that it is established that the respondent did not have any intention to kill or eliminate the complainant. It was the conduct of the complainant himself which had led to a sudden eruption of differences and quarrel in which the complainant had received injuries. There is no evidence of the respondents being implicated in any other case.

7. After considering the matter in its entirety by the judgment dated 25th April, 2016 the learned Trial Judge has found the respondents guilty for commission of offence under Section 324/34 as they had voluntarily caused injuries to the complainant by some sharp edged weapon. Thereafter by the consequential order dated 28th April, 2016 the Trial Judge directed that for the conviction the respondents be released on probation for a period of three years subject to the condition that they would furnish a personal bond of Rs. 50,000/- with one surety of like amount. It was further directed that they would not disturb the public peace and tranquility. In the event of any breach of condition, it was directed that the respondents would appear and receive sentence. Additionally,

compensation of Rs. 15,000/- each was directed to be paid by the respondents to the injured.

8. In view of the foregoing discussion and the facts established on record, we find no error in the findings returned by the learned Trial Judge. We are also of the view that the order on sentence has been carefully made keeping in view the circumstances in which the offence occurred. The respondents have been bound for a period not less than three years and in the event of breach of the conditions imposed by the learned Trial Judge they render themselves liable for punishment which would be then imposed. The learned Trial Judge has also directed compensation to be paid to the injured/complainant.

9. In our view the leave petition is devoid of any legal merit and is hereby dismissed.

GITA MITTAL, J

ANU MALHOTRA, J

NOVEMBER 25, 2016

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